

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION

OPIATE LITIGATION

This document relates to:

Track One Cases

MDL 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**PLAINTIFFS' RESPONSE TO TEVA, CEPHALON AND ACTAVIS LLC'S
OBJECTIONS TO PLAINTIFFS' SECOND AMENDED DESIGNATED LIVE
STREAM WITNESSES**

This dispute is the result of Defendants' own insistence that there were three corporate defendants, not two. As a result, Plaintiffs' rationale for Mr. Pyfer's four-day hiatus from plaintiffs' witness list is sound. Andrew Pyfer was first designated by plaintiffs as a potential trial witness on August 9, 2019. On September 25th Mr. Pyfer was further designated as plaintiffs' live stream witness for defendant Teva. In the same filing, Mary Woods was designated as the live stream witness for defendant Actavis. At that time, Cephalon was considered a part of the Teva-related defense family.

On Monday, October 7, 2019 the Court presided over a conference concerning, among other things, jury instructions and the verdict form. Counsel present for defendants Teva and Actavis insisted that the total number of Teva-related defendants exceeded thirteen and as a result, all thirteen must appear on the verdict form as individual defendants. Plaintiffs responded that if the Teva-related defendants had increased to thirteen, then we should be entitled to a live stream witness for each individual defendant. At the end of the daylong conference, the Court finally reached agreement

among the parties that the number of Teva-related defendants would be increased from two to three: Teva, Actavis and Cephalon.

Also, on Monday afternoon, October 7, 2019, counsel for the Teva-related defendants objected to the substitution of Colleen McGinn for Andrew Pyfer as the Teva live stream witness because Ms. McGinn had only previously been identified as testifying via her deposition. A few hours later, Special Master Cohen, after consultation with Judge Polster, ruled that only two live stream witnesses could be designated by plaintiffs for defendants Teva, Actavis and Cephalon. As a result, plaintiffs re-designated Andrew Pyfer as the live stream witness along with Mary Woods for Actavis and re-designated the deposition of Colleen McGinn.

Regardless of this seemingly complicated chain of events, defendants are not prejudiced by the mere four-day absence of Andrew Pyfer from plaintiffs' witness list. They certainly are not prejudiced by the reversion of Colleen McGinn from live to deposition witness, a result defense counsel specifically requested. Both of these changes occurred as a result of Cephalon's own decision to be separately identified as a defendant. Nor are the number of trial witnesses unreasonable for three separate defendants. Currently, plaintiffs have identified a total of five witnesses for the Teva, Actavis and Cephalon defendants; two live and three by deposition. Plaintiffs' actions to adapt to the changing Teva, Actavis and Cephalon landscape were neither untimely nor unreasonable and plaintiffs should be allowed to re-instate Andrew Pyfer as a live witness.

Dated: October 10, 2019

Respectfully submitted,

/s/Paul J. Hanly, Jr.
Paul J. Hanly, Jr.
SIMMONS HANLY CONROY
112 Madison Avenue, 7th Floor
New York, NY 10016

(212) 784-6400
(212) 213-5949 (fax)
phanly@simmonsfirm.com

Joseph F. Rice
MOTLEY RICE
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
(843) 216-9000
(843) 216-9290 (Fax)
jrice@motleyrice.com

Paul T. Farrell, Jr., Esq.
GREENE KETCHUM, LLP
419 Eleventh Street
Huntington, WV 25701
(304) 525-9115
(800) 479-0053
(304) 529-3284 (Fax)
paul@greeneketchum.com

Plaintiffs' Co-Lead Counsel

Peter H. Weinberger (0022076)
SPANGENBERG SHIBLEY & LIBER
1001 Lakeside Avenue East, Suite 1700
Cleveland, OH 44114
(216) 696-3232
(216) 696-3924 (Fax)
pweinberger@spanglaw.com

Plaintiffs' Liaison Counsel

W. Mark Lanier
THE LANIER LAW FIRM
6810 FM 1960 Rd W
Houston, TX 77069-3804
(713) 659-5200
(713) 659-2204 (Fax)
wml@lanierlawfirm.com

Lead Trial Counsel

Hunter J. Shkolnik

NAPOLI SHKOLNIK
360 Lexington Ave., 11th Floor
New York, NY 10017
(212) 397-1000
(646) 843-7603 (Fax)
hunter@napolilaw.com

Counsel for Plaintiff Cuyahoga County, Ohio

Donald Migliori
MOTLEY RICE LLC
28 Bridge Street
Mt. Pleasant, SC 29464
(401) 457-7709
dmigliori@motleyrice.com

Counsel for Plaintiff Summit County, Ohio